

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Structure and Practices of the Video Relay Service Program
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities
CG Docket No. 10-51
CG Docket No. 03-123

REPORT AND ORDER

Adopted: March 1, 2016

Released: March 3, 2016

By the Commission:

I. INTRODUCTION

1. In this Report and Order we provide limited compensation rate relief for video relay service (VRS) providers with 500,000 or fewer monthly minutes (smallest VRS providers). Specifically, we grant the smallest VRS providers limited relief, on a retrospective and going-forward basis, from certain Tier I compensation rate adjustments adopted in the VRS Reform Order. For the 16-month period beginning July 1, 2015, and ending October 31, 2016, we direct the administrator of the Interstate Telecommunications Relay Services Fund (TRS Fund) to pay compensation to such providers at a rate of \$5.29 per minute. For the period from November 1, 2016, to April 30, 2017, we direct the administrator of the Interstate Telecommunications Relay Services Fund (TRS Fund) to pay compensation to such providers at a rate of \$5.06 per minute. For the period from May 1 to June 30, 2017, we direct the administrator of the Interstate Telecommunications Relay Services Fund (TRS Fund) to pay compensation to such providers at a rate of \$4.82 per minute.

II. BACKGROUND

2. In the 2013 VRS Reform Order, the Commission amended its telecommunications relay service (TRS) rules to improve the structure, efficiency, and quality of the VRS program, reduce the risk of waste, fraud, and abuse, and ensure that the program makes full use of advances in commercially-available technology. In the portion of the VRS Reform Order dealing with compensation rates, the Commission recognized a need to better align VRS compensation rates with the allowable costs of this service, pending a further determination as to VRS compensation methodology. To that end, and as an

1 Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (2013) (VRS Reform Order), aff'd in part and vacated in part sub nom. Sorenson Communications, Inc. v. FCC, 765 F.3d 37 (D.C. Cir. 2014).

2 Id.

3 VRS Reform Order, 28 FCC Rcd at 8694-706, paras. 188-216. Pursuant to the TRS rules, VRS providers submit the number of minutes of service they provide to the TRS Fund administrator on a monthly basis and are compensated for these minutes based on rates set annually by the Commission. 47 C.F.R. § 64.604(c)(5).

alternative to immediately reducing rates to a level based on average costs,<sup>4</sup> the Commission adopted a four-year schedule that gradually adjusts the VRS compensation rates downward every six months, beginning July 1, 2013, and ending June 30, 2017.<sup>5</sup> The Commission retained a modified version of the tiered VRS compensation rate structure during this transition period in order “to ensure that smaller VRS providers have a reasonable opportunity to improve the efficiency of their operations and to reach the optimum scale to compete effectively after the implementation of structural reforms.”<sup>6</sup> The per-minute VRS compensation rates established by the *VRS Reform Order* for the second half of the 2014-15 Fund Year and subsequent periods are as follows:

**Table 1**

	Jan. – June 2015	July – Dec. 2015	Jan. – June 2016	July – Dec. 2016	Jan. – July 2017
Tier I (1 <sup>st</sup> 500,000 monthly minutes)	\$5.29	\$5.06	\$4.82	\$4.44	\$4.06
Tier II (2 <sup>nd</sup> 500,000 monthly minutes)	\$4.82	\$4.82	\$4.82	\$4.44	\$4.06
Tier III (monthly minutes exceeding 1 million)	\$4.25	\$4.06	\$3.87	\$3.68	\$3.49

3. On March 30, 2015, the six currently certified VRS providers jointly filed a petition urging the Commission to freeze the then-applicable VRS compensation rates of \$5.29, \$4.82, and \$4.25 per minute, and to keep these in effect “until [the Commission] implements a permanent rate methodology in the ongoing rulemaking proceeding.”<sup>7</sup> Individual providers also submitted, under confidentiality requests, additional information regarding their costs and how they believed their operations would be affected absent a rate freeze.

4. On June 30, 2015, CGB issued an order setting the compensation rates, revenue requirement, and contribution factor for the TRS Fund for the 2015-16 Fund Year.<sup>8</sup> While adjusting the applicable compensation rates downward in accordance with the *VRS Reform Order*, the Bureau noted

<sup>4</sup> In this Order, the term “average,” when used to describe multiple providers’ costs, means an average of provider costs weighted in proportion to each provider’s total minutes.

<sup>5</sup> *VRS Reform Order*, 28 FCC Rcd at 8703-04, para. 212. By providing in advance for a step-by-step adjustment of the rates at six-month intervals over a four-year period, the Commission sought to improve the predictability of reimbursements and assist providers in planning efficiently for the completion of structural reforms.

<sup>6</sup> *Id.* at 8704, para. 214; *see also id.* at 8698, paras. 199-200. A tiered compensation rate structure allows providers to earn a higher compensation rate on the initial minutes of service provided each month. Pursuant to the three-tiered VRS rate structure as modified in the *VRS Reform Order*, the Tier I rate (the highest rate) applies to a provider’s first 500,000 monthly VRS minutes, the Tier II rate applies to a provider’s second 500,000 monthly minutes, and the Tier III rate (the lowest rate) applies to monthly minutes in excess of 1,000,000. *Id.* at 8702, para. 208. As a result, smaller providers receive more compensation per minute, on average, than larger providers.

<sup>7</sup> *See* Joint Proposal of All Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates at 7 (filed Mar. 30, 2015) (Joint VRS Providers Proposal).

<sup>8</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 30 FCC Rcd 7063 (CGB 2015).

that the TRS Fund revenue requirement and contribution factor set for 2015-16 was subject to adjustment if necessary as a result of subsequent Commission action.<sup>9</sup>

5. On November 3, 2015, the Commission released a Further Notice of Proposed Rulemaking (FNPRM) proposing to temporarily freeze the compensation rates of providers handling 500,000 or fewer monthly minutes.<sup>10</sup> In proposing a rate freeze for such providers, the Commission relied on an analysis by the TRS Fund administrator, Rolka Loube Associates LLC (Rolka Loube), showing that, while the average projected per-minute costs for VRS providers as a whole remain well below average compensation rates, the average projected allowable costs for the smallest VRS providers for 2015-16 were above the Tier I rates scheduled for the 2015-16 Fund Year, “potentially jeopardizing their continuation of service.”<sup>11</sup> In addition, the Commission relied on individual cost data filed by the each VRS provider, which indicated that, in the years since the *VRS Reform Order*, each of the smallest VRS providers has made strenuous and, to some extent, successful efforts to reduce per-minute costs, but each has fallen short of achieving the cost reductions necessary to break even under the *VRS Reform Order* compensation rates.<sup>12</sup> The Commission also noted that certain service features offered by the smallest VRS providers may “be helpful in advancing the goal of functionally equivalent service for certain subsets of VRS consumers.”<sup>13</sup> The Commission further noted that the smallest VRS providers are reportedly “operating without a substantial amount of long-term debt,” which “can represent a potentially significant advantage, not only for the providers themselves, but for the long-term ability of the TRS Fund to support the provision of TRS ‘in the most efficient manner.’”<sup>14</sup> In light of these considerations, the Commission proposed “a limited modification of the *VRS Reform Order*,” to allow the smallest VRS providers a reasonable measure of temporary relief.<sup>15</sup> Specifically, the Commission proposed that for such providers, the Tier I rate of \$5.29 per minute that was in effect prior to June 30, 2015, would continue in effect for a maximum of 16 months, beginning July 1, 2015.

6. On November 23, 2015, the three providers who would qualify for temporary relief under the proposed rate freeze – Convo, CAAG/Star, and ASL/Global – jointly filed an Emergency Petition seeking an immediate grant of such relief.<sup>16</sup> In their Emergency Petition, the smallest VRS providers state they each have been operating at a loss and that their operating losses will be compounded by the further Tier I rate reduction taking effect January 1, 2016.<sup>17</sup> According to the petition, this further rate reduction

---

<sup>9</sup> *Id.* at 7067, para. 12.

<sup>10</sup> *Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 30 FCC Rcd 12973 (2015) (*VRS Rate Freeze FNPRM*). See 80 Fed. Reg. 72029 (Nov. 18, 2015).

<sup>11</sup> *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12981, para. 18. See also Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate at 24-25 (filed Apr. 24, 2015) (*2015 TRS Rate Filing*).

<sup>12</sup> *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12978, 12981-82, paras. 9, 18. See, e.g., Letter from Angela Roth, Managing Member, President, and Chief Executive Officer, ASL Services Holdings, LLC (ASL/Global VRS), to Marlene H. Dortch, FCC Secretary, and Appx. A (filed Apr. 28, 2015); Letter from Jeremy M. Jack, Vice President, Hancock, Jahn, Lee & Puckett, LLC d/b/a Communication Axess Ability Group (CAAG/Star VRS), to Marlene H. Dortch, FCC Secretary, and Appx. B (filed Apr. 28, 2015); Letter from Jeff Rosen, General Counsel, Convo Communications, LLC (Convo), to Marlene H. Dortch, FCC Secretary, and confidential handout (filed Jun. 12, 2015) (Convo June 12, 2015 Ex Parte).

<sup>13</sup> *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12981, para. 17 (footnote omitted).

<sup>14</sup> *Id.*, quoting 47 U.S.C. § 225(b)(1).

<sup>15</sup> *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12981, para. 18, citing *2015 TRS Rate Filing* at 25 & Table 4.

<sup>16</sup> Convo, CAAG/Star VRS, and ASL/Global VRS, Emergency Petition for a Temporary Nunc Pro Tunc Waiver (filed Nov. 25, 2015) (Smallest VRS Providers Petition).

<sup>17</sup> *Id.* at 2-3.

“will fundamentally undermine, if not jeopardize, the ability of the [petitioners] to continue to participate in the Commission’s VRS program.”<sup>18</sup> The three smallest VRS providers also filed additional cost data on a confidential basis, updating the information in their previous filings.<sup>19</sup>

### III. DISCUSSION

7. We adopt the proposal of the *VRS Rate Freeze FNPRM* to temporarily “freeze”<sup>20</sup> the compensation rates of providers handling 500,000 or fewer monthly minutes,<sup>21</sup> a measure that is widely supported by the commenting parties.<sup>22</sup> For such providers, we direct Rolka Loube to pay compensation, subject to a possible true-up, at a compensation rate of \$5.29 per VRS minute for the period from July 1, 2015, to October 31, 2016.<sup>23</sup>

8. The record of this proceeding confirms that for each of the smallest VRS providers, the per-minute costs incurred or projected by the provider in calendar years 2015 and 2016, respectively, are higher than the “blended” compensation rate applicable to that provider in that year.<sup>24</sup> Although individual providers’ cost data have been submitted with requests for confidentiality and thus are not publicly disclosed in this Report and Order,<sup>25</sup> the individual cost information filed by the smallest VRS

---

<sup>18</sup> *Id.* at 3.

<sup>19</sup> See Letter from Jeff Rosen, General Counsel, Convo, to Marlene H. Dortch, FCC Secretary (filed Jan. 29, 2016) (Convo January 2016 Updated Costs Ex Parte); Letter from Jeremy M. Jack, Vice President, CAAG/Star VRS, to Marlene H. Dortch, FCC Secretary (filed Jan. 29, 2016) (CAAG/Star VRS January 2016 Updated Costs Ex Parte); Letter from Andrew O. Isar, Miller Isar Inc., Regulatory Consultants to ASL Service Holdings, LLC, to Marlene H. Dortch, FCC Secretary (filed Feb. 2, 2016) (ASL/Global VRS February 2016 Updated Costs Ex Parte).

<sup>20</sup> Throughout this Report and Order, we use the word “freeze” as a shorthand to refer to two rules that we are adopting in this Report and Order. First, from the effective date of this Report and Order through October 31, 2016, we direct the administrator to pay compensation to the three smallest VRS providers at a rate of \$5.29 per minute. Second, we direct the administrator to pay each of the smallest VRS providers a one-time lump sum reflecting the difference between the compensation they would have received if they had been paid at a rate of \$5.29 per minute and the compensation they actually received at the lower applicable rates, for all compensable calls completed during the period between July 1, 2015, and the effective date of this Report and Order.

<sup>21</sup> This rate is applicable to a VRS provider in any month for which the provider submits 500,000 or fewer compensable VRS minutes for compensation from the TRS Fund.

<sup>22</sup> ASL/Global VRS Comments at 15-19; CAAG/Star VRS Comments at 2; Consumer Groups Comments at 1; Convo Comments at 4-6; Purple Comments at 8; Sorenson Comments at 2; ZVRS Comments. As discussed further below, some parties that support a rate freeze for the smallest VRS providers also urge the Commission to apply a rate freeze to compensation of larger providers.

<sup>23</sup> See note 20, *supra*.

<sup>24</sup> See ASL/Global VRS February 2016 Updated Costs Ex Parte; CAAG/Star VRS January 2016 Updated Costs Ex Parte; Convo January 2016 Updated Costs Ex Parte; Convo June 12, 2015 Ex Parte; see also Letter from Andrew O. Isar, Miller Isar Inc., Regulatory Consultants to ASL Services Holdings, LLC, with attachment “Separate Statement of ASL Services Holdings, LLC to Joint Emergency Petition for a Temporary Nunc Pro Tunc Waiver” (filed Nov. 25, 2015); Letter from Jeff Rosen, General Counsel, Convo, to Marlene H. Dortch, FCC Secretary (filed Dec. 9, 2015); Letter from Jeremy M. Jack, Vice President, CAAG/Star VRS, to Marlene H. Dortch, FCC Secretary, with attachment “Hancock, Jahn, Lee & Puckett, LLC Supplement to its 2015 Rate FNPRM Comments” (filed Dec. 16, 2015) (CAAG/Star VRS Executive Compensation Ex Parte); Letter from Andrew O. Isar, Miller Isar Inc., Regulatory Consultants to ASL Services Holdings, LLC (filed Dec. 17, 2015) (ASL/Global VRS Executive Compensation Ex Parte); Letter from Jeff Rosen, General Counsel, Convo Communications, LLC, to Marlene H. Dortch, FCC Secretary (filed Dec. 28, 2015) (Convo Executive Compensation Ex Parte). A provider’s “blended” compensation rate for a calendar year is the average of the Tier I rates applicable in the first and second halves of the calendar year, weighted by the provider’s projected minutes for each half.

<sup>25</sup> The information for which confidential treatment has been requested is subject to limited access by other parties pursuant to the protective orders adopted in this proceeding. See *Structure and Practices of the Video Relay Service* (continued....)

providers, which we find to be credible, while updating the cost data previously filed with Rolka Loube, confirms Rolka Loube's initial assessment that the deficits incurred by the smallest VRS providers may be "jeopardizing their continuation of service."<sup>26</sup>

9. Regarding the reliability of the cost data submitted by these VRS providers, we note that all VRS providers are required to submit detailed cost and demand data to the Fund administrator on an annual basis.<sup>27</sup> Such information is submitted under penalty of perjury and subject to audit, and there are sanctions, including potentially decertification, for submitting falsified data or for including costs that are not in accordance with the administrator's instructions regarding allowable costs.<sup>28</sup> Staff has carefully reviewed the updated cost and demand data submitted by the smallest VRS providers in this rulemaking, and it is generally consistent with the cost and demand projections previously submitted to the administrator. While, as is typical, there are some differences between the updated information and the projections initially submitted to the administrator, staff is satisfied that the data is sufficiently supported based on the explanatory material submitted by the providers.

10. Further, the smallest VRS providers credibly argue that available financing arrangements will not permit them to maintain operations indefinitely in accordance with the Commission's minimum TRS standards while continuing to operate at a loss. According to the Tier I Providers Petition, "each of the [smallest VRS providers] now need new funding sources to simply maintain their operations—either new outside equity investments or new debt financing. Traditional commercial lenders will not loan money to a small business that is operating at a loss, especially when the loss is scheduled to incrementally increase every six months for the foreseeable future due to automated regulatory actions. Further, even where a . . . [p]rovider is able to secure such financing, the new and added interest expense further erodes the ability of the [smallest VRS providers] to break even."<sup>29</sup> Therefore, we find that, absent rate relief, it is likely that the smallest providers either (1) will be unable to maintain their operations in 2016 or (2) will be unable to continue to grow their operations significantly in the direction of reaching

(Continued from previous page) \_\_\_\_\_

*Program et al.*, Protective Order, 27 FCC Rcd 2557 (CGB 2012); Second Protective Order, 27 FCC Rcd 5914 (CGB 2012).

<sup>26</sup> *2015 TRS Rate Filing* at 24-25; *see also id.* at 25 (presenting data indicating that average total projected per-minute costs for the three smallest VRS providers were approximately \$5.43 in 2015 and \$4.82 in 2016, including about \$.10 in outreach costs, which are no longer allowable costs). By comparison, the Tier I compensation rates average about \$5.175 per minute for 2015 and \$4.63 per minute for 2016. Further, more recent data provided by the three smallest VRS providers following their submission of the Joint VRS Providers Proposal demonstrates that their average allowable costs for both 2015 and 2016 are substantially higher than the initial estimates reflected in the *2015 TRS Rate Filing*. *See* note 24, *supra*. At the Commission staff's request, the three smallest VRS providers each submitted additional cost detail regarding executive compensation. ASL/Global VRS Executive Compensation Ex Parte; CAAG/Star VRS Executive Compensation Ex Parte; Convo Executive Compensation Ex Parte.

<sup>27</sup> *See* 47 C.F.R. § 64.604(c)(5)(iii)(D)(1) (requiring TRS providers to "provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested to determine the TRS Fund revenue requirements and payments," including "total TRS minutes of use, . . . total TRS investment, . . . and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements"); *2015 TRS Rate Filing*, Appx. B (Interstate TRS Fund Annual Provider Information (Provider Data Collection Form & Instructions)).

<sup>28</sup> *See* 47 C.F.R. §§ 64.604(c)(5)(iii)(D)(6) ("The fund administrator and the Commission, including the Office of Inspector General, shall have the authority to examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments"), (I) ("The CEO, CFO, or other senior executive of a provider submitting cost and demand data to the TRS Fund administrator shall certify under penalty of perjury that such information is true and correct."), 64.606(e)(2) (regarding suspension or revocation of certification).

<sup>29</sup> Smallest VRS Providers Petition at 11.

optimum levels of efficiency.<sup>30</sup> As a result, the Commission’s objective to offer such providers “a reasonable opportunity to . . . reach the optimum scale to compete effectively” may be undermined.<sup>31</sup>

11. As the Commission has previously recognized, the presence of diverse providers can spur improvements in the availability, efficiency, and functional equivalence of VRS.<sup>32</sup> Further, public interest considerations favor the grant of interim relief. The record confirms that certain service features offered by small VRS providers may be uniquely “helpful in advancing the goal of functionally equivalent service for certain subsets of VRS consumers.”<sup>33</sup> Specialized features offered by the smallest VRS providers include Spanish language VRS<sup>34</sup> and emergency alert functions for schools for the deaf.<sup>35</sup>

12. Based on these various considerations, we conclude that we should temporarily halt the scheduled reduction in the VRS compensation rates applicable to the smallest VRS providers, consistent with the Commission’s objective in the *VRS Reform Order* to permit smaller providers a reasonable opportunity to grow and to attain efficiencies comparable to those of larger VRS providers.<sup>36</sup> Accordingly, we adopt a limited deviation from the *VRS Reform Order* rate plan. Specifically, we adopt our proposal in the *VRS Rate Freeze FNPRM* to apply a rate of \$5.29 per minute to compensation claimed by the smallest VRS providers for a limited period. This rate, which was in effect prior to July 1, 2015, is lower than the smallest VRS providers’ average projected allowable costs for 2015 but higher than their

---

<sup>30</sup> See *id.* at 11 (stating that in order to continue operating despite deficits, the smallest VRS providers “have been forced to seek alternative financing arrangements, such as short-term bridge loans from family members, or to subsidize their VRS operations from revenue generated by other profitable non-VRS divisions”), 11-12 (asserting that such alternative financing arrangements are insufficient to enable the smallest providers to continue their growth trajectories).

<sup>31</sup> *VRS Reform Order*, 28 FCC Rcd at 8704, para. 214.

<sup>32</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577, 20588, para. 21, 20590, para. 26 (2005). In the *VRS Reform Order*, while recognizing some of the shortcomings of a competition-based policy, the Commission instituted reforms in order to utilize competition more effectively in implementing the goals of section 225 but did not mandate an end to VRS competition. See *VRS Reform Order*, 28 FCC Rcd at 8622-25, paras. 5-11; see also *id.* at 8699, para. 200 (recognizing the value of setting transitional rates in this context).

<sup>33</sup> *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12981, para. 17; see also *id.* at 12983-84; Smallest VRS Providers Petition at 7-8 (describing various unique and innovative aspects of the smallest providers’ operations and service features). Further, as noted in the *VRS Rate Freeze FNPRM*, the presence of providers who are “operating without a substantial amount of long-term debt . . . can represent a potentially significant advantage, not only for the providers themselves, but for the long-term ability of the TRS Fund to support the provision of TRS ‘in the most efficient manner.’” *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12981, para. 17, quoting 47 U.S.C. § 225(b)(1). As noted above, the record indicates that the smallest VRS providers currently do not have major amounts of long-term debt. See, e.g., Convo Comments at 5 (stating that Convo has declined to bring in venture capital as it feels that would “risk Convo’s focus on consumer and interpreter oriented relay services”); Tier I Providers Petition at 11.

<sup>34</sup> ASL/Global VRS Comments at 4, 21-22.

<sup>35</sup> Convo Comments at 7-8. Convo also discusses other services that could increase functional equivalence. *Id.* at 11-15.

<sup>36</sup> See *VRS Reform Order*, 28 FCC Rcd at 8698-99, para. 199 (because structural reforms “will address many of the issues that have made it difficult for small providers to operate efficiently,” elimination of rate tiers should be deferred so that it “will be able to coincide with the implementation of VRS structural reforms”), 8999, para. 200 (keeping tiered rates during the transition to structural reforms “in order to allow smaller providers an opportunity to increase the efficiency of their operations so as to maximize their chances of success after structural reforms are implemented”), 8704, para. 214 (structuring the “glide path” toward cost-based levels so as to “ensure that smaller VRS providers have a reasonable opportunity to improve the efficiency of their operations and to reach the optimum scale to compete effectively after the implementation of structural reforms”).

average projected allowable costs for 2016.<sup>37</sup> It is also lower than any individual provider's allowable costs for 2015.<sup>38</sup>

13. We conclude that application of a \$5.29 per minute compensation rate to the smallest VRS providers will generally provide a reasonable level of support for the operations of the smallest VRS providers and will not risk providing significant overcompensation for such providers. In addition, application of this rate to the smallest VRS providers, in lieu of the previously scheduled rates, will not impose a heavy cost burden on the TRS Fund.<sup>39</sup>

14. Regarding the period for which this rate freeze should apply, we adopt the proposal in the FNPRM for an adjusted compensation rate of \$5.29 per minute to be effective for 16 months, beginning retroactively on July 1, 2015, the beginning of the current Fund Year,<sup>40</sup> and ending on October 31, 2016.<sup>41</sup> This 16-month rate freeze allows the smallest VRS providers the opportunity to achieve market share growth and improvements in efficiency while benefitting from further implementation of structural reforms – such as the establishment of the ACE platform, which will address interoperability and other matters and is scheduled for launch this year.

15. While rates should not be frozen indefinitely, we agree with a number of commenting parties that, in order to avoid subjecting the smallest VRS providers to a sudden drop in compensation upon the expiration of the 16-month period, the compensation rate for the smallest providers should be adjusted downward in the same increments previously directed in the *VRS Reform Order*.<sup>42</sup> In other words, for the smallest VRS providers the “glide path” originally established in the *VRS Reform Order* will resume after a 16-month freeze. The resulting rates for the Tier I providers for the period from January 1, 2015, to the end of the four-year period are shown in the following table.

---

<sup>37</sup> See, e.g., *TRS Rate Filing* at 25.

<sup>38</sup> Staff analysis of updated cost and demand information submitted by the three smallest providers.

<sup>39</sup> *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12982, para. 18 n.50 (estimating that freezing the smallest VRS providers' compensation at \$5.29 per minute for one year would cost less than \$2.84 million); see also Smallest VRS Providers Petition at 8-9 (arguing that “the actual cost to the TRS Fund of freezing [the smallest providers'] compensation rates at June 30, 2015 levels is far below \$2.84 million”).

<sup>40</sup> On a number of prior occasions, the Commission and the Bureau have applied adjustments, including changes in TRS compensation rates and contribution factors, retroactively to the beginning of a Fund Year. See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, 21 FCC Rcd 8050, 8056, paras. 12-13 (2006); Memorandum Opinion and Order, 21 FCC Rcd 8063, 8072-73, para. 21 (2006); Order, 19 FCC Rcd 2993, 2996, para. 8 (CGB 2004); Order, 19 FCC Rcd 24981, 24982, para. 4 (CGB 2004); Order, 23 FCC Rcd 1680, 1682, para. 7 (CGB 2008).

<sup>41</sup> A 16-month freeze period is supported by several parties. See Convo Comments at 8 (“A 16-month rate freeze period will sustain Convo and allow it to achieve a minimum efficient scale in 2016.”); CAAG/Star VRS Comments at 5 (supporting rate freeze for “a minimum of 16 months”).

<sup>42</sup> See CAAG/Star VRS Comments at 6-7; Convo Comments at 8.

Table 2

	Jan. – June 2015	July – Dec. 2015	Jan. – June 2016	July – Oct. 2016	Nov. – Dec. 2016	Jan. – Apr. 2017	May – June 2017
Tier I (1 <sup>st</sup> 500,000 monthly minutes) for VRS providers with 500,000 or fewer minutes in a month	\$5.29	\$5.29	\$5.29	\$5.29	\$5.06	\$5.06	\$4.82
Tier I (1 <sup>st</sup> 500,000 monthly minutes) for VRS providers with more than 500,000 minutes in a month	\$5.29	\$5.06	\$4.82	\$4.44	\$4.44	\$4.06	\$4.06
Tier II (2 <sup>nd</sup> 500,000 monthly minutes)	\$4.82	\$4.82	\$4.82	\$4.44	\$4.44	\$4.06	\$4.06
Tier III (monthly minutes exceeding 1 million)	\$4.25	\$4.06	\$3.87	\$3.68	\$3.68	\$3.49	\$3.49

16. In response to the *VRS Rate Freeze FNPRM*, a number of commenters urge the Commission to expand the proposed scope of the rate freeze beyond the smallest VRS providers. For example, some parties argue that VRS providers that are larger than the smallest providers, but significantly smaller than the largest provider, also have a need for rate relief based on a comparison of their costs with applicable compensation rates.<sup>43</sup>

17. The information provided to us does not indicate that any VRS providers other than the smallest providers will have allowable costs exceeding the average compensation rate applicable to such providers in 2015 and 2016.<sup>44</sup> We recognize that among the three largest VRS providers, there are substantial differences in per-minute costs. However, as noted in the *VRS Rate Freeze FNPRM*, the Commission previously restructured the rate tiers – and “froze” the Tier II rate at \$4.82 for the first three years of the transition period – in order to allow the smaller of these providers “a full opportunity to improve efficiencies and achieve scale.”<sup>45</sup> Again, these providers have not shown that they will incur allowable costs in excess of their revenues in 2015 and 2016.

18. We note that several parties attempt to renew claims made in prior proceedings alleging that the categories of allowable costs are too narrow to permit recovery of all reasonable VRS costs, those claims were considered and rejected in the *VRS Reform Order*.<sup>46</sup> Further, while a number of parties

<sup>43</sup> Purple Comments at 8-10; ZVRS Comments; *see also* Comments of Purple Communications on Emergency Petition for a Temporary Nunc Pro Tunc Waiver (filed Dec. 9, 2015).

<sup>44</sup> *See* Purple Comments, Attachment “Video Relay Service Market Distribution and Cost Structure Analysis”; ZVRS Comments. The Commission staff also reviewed the individual cost data submitted to Rolka Loube by the three largest VRS providers.

<sup>45</sup> *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12985, para. 27.

<sup>46</sup> *VRS Reform Order*, 28 FCC Rcd at 8696-98, paras. 192-96. The Commission expressly declined to reopen those questions in the *VRS Rate Freeze FNPRM*. *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12980, para. 13.

contend that implementation of structural reforms has imposed additional costs,<sup>47</sup> no party has submitted specific estimates or documentation regarding such implementation costs.<sup>48</sup>

19. In summary, while some parties contend that the compensation rates for currently profitable providers should be frozen, allegedly to prevent reductions in the quality of VRS,<sup>49</sup> we do not perceive any immediate risk that any of the larger VRS providers have been or will be unable to continue to provide service that meets the Commission's minimum TRS standards in 2015 and 2016.<sup>50</sup> We note, however, that there is an open FNPRM on a number of broader VRS ratemaking proposals and issues.<sup>51</sup> Some of the comments filed in response to the *VRS Rate Freeze FNPRM* address those matters, as well as raising new issues regarding quality of service<sup>52</sup> and the viability of future competition in the VRS market.<sup>53</sup> To the extent relevant, the Commission may address these comments when it completes action on the broader VRS rulemaking proposals.

---

<sup>47</sup> ASL/Global VRS Comments at 11-13, 17-18; CAAG/Star VRS Comments at 6; Convo Comments at 5; Sorenson Comments at 3-5.

<sup>48</sup> We note, however, that in the FNPRM accompanying the *VRS Reform Order*, the Commission sought comment on whether to adopt a mechanism whereby providers may seek to recover their actual reasonable costs of complying with particular new requirements adopted in the *VRS Reform Order*. *VRS Reform Order*, 28 FCC Rcd at 8711, para. 240.

<sup>49</sup> See, e.g., Sorenson Comments at 2.

<sup>50</sup> As also noted in the *VRS Rate Freeze FNPRM*, the larger VRS providers have voluntarily incurred substantial amounts of long-term debt. *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12985, para. 26. The largest provider, for example, incurred a major long-term debt "to finance a leveraged buyout" (*Sorenson*, 765 F.3d at 49) and, despite its recent bankruptcy and reorganization – which it entered into with full knowledge of the compensation rate plan and other requirements adopted in the *VRS Reform Order* – still carries on its books some \$1.2 billion in debt, on which it was projected to pay \$115.6 million in interest in 2015, largely to generate profits for its investors. See Sorenson STA Application, Exh. B at 3, 4. This payment represents approximately 30 percent of the largest provider's projected VRS revenue in 2015 and 20 percent of the total projected Fund payment for VRS in 2015-16. Although Sorenson claims that its debt levels "are on par with typical telecommunications companies" (Sorenson Comments at 9), it is only Sorenson that seeks to require other telecommunication companies (and, thus, their ratepayers) to cover – through TRS Fund contributions – whatever interest or dividend payments its investors choose to impose. As noted in the *VRS Rate Freeze FNPRM*, there does not appear to be any legitimate reason why a rate freeze should be adopted merely to ensure that profitable providers' unauthorized dividends and interest payments can continue to be subsidized by telecommunications consumers generally. *VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12985, para. 28. Further, no provider has suggested how to structure a rate freeze for such profitable providers to ensure that the additional monies are used to maintain or enhance the quality of service rather than to subsidize excessive levels of debt. See *id.* (inviting comment on this issue).

<sup>51</sup> In addition to the issue of structural reform implementation costs (see n.48, *supra*), the Commission has proposed, through a variety of possible methods, to use competitively established prices in determining appropriate levels of VRS compensation. *VRS Reform Order*, 28 FCC Rcd at 8706-10, paras. 217-38.

<sup>52</sup> For example, some parties request that the Commission develop more detailed service standards and metrics and take them into account when setting VRS compensation rates. Consumer Groups Comments at 1-3; RID Comments at 2-4.

<sup>53</sup> For example, a number of parties contend that VRS competition is harmed by determining the compensation of all VRS providers based on a weighted average that reflects primarily the costs incurred by the largest VRS provider. Purple Comments at 8-12; ZVRS Comments at 11-12; ASL/Global VRS Comments at 7. Further, in response to the FNPRM's request for information regarding unique service features and for comment regarding whether, after completion of structural reforms, any role should remain for providers who are unable to attain an efficient scale of operations (*VRS Rate Freeze FNPRM*, 30 FCC Rcd at 12985, para. 26), a number of providers have identified specific service features they regard as unique and have urged that these be taken into account in setting future VRS compensation rates. See ASL/Global VRS at 12, 21-22; CAAG/Star VRS Comments at 3-4, 7-8; Convo Comments at 7-8, 10-15; ZVRS Comments at 26-27.

20. In summary, we direct Rolka Loube to compensate the smallest VRS providers at a rate of \$5.29 per minute, applicable from July 1, 2015, through October 31, 2016. More specifically, from the effective date of this Report and Order through October 31, 2016, we direct the administrator to pay compensation to the smallest VRS providers at a rate of \$5.29 per minute. Second, we direct the administrator to pay each of the smallest VRS providers a one-time lump sum reflecting the difference between the compensation they would have received if they had been paid at a rate of \$5.29 per minute and the compensation they actually received at the lower applicable rates, for all compensable calls completed during the period between July 1, 2015, and the effective date of this Report and Order.<sup>54</sup>

21. In addition, to avoid subjecting the smallest VRS providers to a sudden drop in compensation upon the expiration of the 16-month period, we direct the administrator to pay compensation to the smallest VRS providers at a rate of \$5.06 per minute from November 1, 2016, through April 30, 2017, and at a rate of \$4.82 per minute from May 1, 2017, through June 30, 2017.

#### IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 201(b) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201(b), 225, that this Order IS ADOPTED.

23. IT IS FURTHER ORDERED that this Order shall be effective 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>54</sup> One of the three smallest VRS providers, CAAG/Star VRS, recently announced that it will no longer provide VRS after March 31, 2016. See Letter from Jeremy M. Jack, Vice President, CAAG/Star VRS (filed March 1, 2016). The VRS compensation rates as modified by this Report and Order will be paid to CAAG/Star VRS for service provided prior to its discontinuance of service.

## APPENDIX A

## List of Commenters

COMMENTS	DATE SUBMITTED
ASL Services Holdings, LLC (ASL/Global VRS) Communication	December 9, 2015
Axess Ability Group / Star VRS and Star VRS for the DeafBlind (CAAG/Star VRS)	December 10, 2015
Convo Communications, LLC (Convo)	December 9, 2015
CSDVRS, LLC d/b/a/ ZVRS (ZVRS)	December 9, 2015
Purple Communications, Inc. (Purple)	December 9, 2015
Registry of Interpreters for the Deaf, Inc. (RID)	December 9, 2015
Sorenson Communications, Inc. (Sorenson)	December 9, 2015
Consumer Groups consisting of:	December 9, 2015
Telecommunications for the Deaf and Hard of Hearing, Inc.,	
Association of Late-Deafened Adults, Inc.,	
National Association of the Deaf,	
Deaf and Hard of Hearing Consumer Advocacy Network,	
Cerebral Palsy and Deaf Organization,	
California Coalition of Agencies Serving the Deaf and Hard of Hearing, and	
American Association of the Deaf-Blind	
REPLY COMMENTS	DATE SUBMITTED
Convo Communications, LLC (Convo)	December 24, 2015
CSDVRS, LLC d/b/a/ ZVRS (ZVRS)	December 24, 2015
Purple Communications, Inc. (Purple)	December 24, 2015
Sorenson Communications, Inc. (Sorenson)	December 24, 2015
Star VRS/Star VRSdb (Star)	December 24, 2015
Video Relay Services Consumer Association (VRSCA)	December 23, 2015
Alfred Sonnenstrahl (Sonnenstrahl)	December 22, 2015

## APPENDIX B

## Final Regulatory Flexibility Certification

## CG Docket Nos. 10-51, 03-123

1. The Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that the rule will not have “a significant economic impact on a substantial number of small entities.”<sup>2</sup> The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>3</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>4</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>5</sup>

**A. Need For, and Objectives of, the Proposed Rules**

2. After consideration of the comments received in response to the *VRS Rate Freeze FNPRM*,<sup>6</sup> the Order modifies in part the four-year compensation rate plan for video relay service (VRS) adopted in the 2013 *VRS Reform Order*.<sup>7</sup> Although the Commission believes that the four-year schedule of VRS compensation rate reductions continues to be justified in order to gradually move compensation rates close to a level close to average allowable provider costs, the Commission modifies the schedule as applied to the smallest VRS providers, *i.e.*, those providing 500,000 or fewer compensable minutes of use of VRS per month. Spreading rate reductions over a four-year period was largely intended to provide a reasonable opportunity for the smallest providers to reach minimum efficient scale while benefitting from the *VRS Reform Order* initiatives, which were intended to address many of the issues that have made it difficult for small providers to operate efficiently.<sup>8</sup> The smallest providers have achieved significant reductions in their per-minute costs but have yet to approach the size or efficiency levels of their larger rivals. Further, some relevant *VRS Reform Order* initiatives, such as the open source video access

<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> 5 U.S.C. § 605(b).

<sup>3</sup> *Id.* § 601(6).

<sup>4</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>5</sup> 15 U.S.C. § 632.

<sup>6</sup> *Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 30 FCC Rcd 12973 (2015) (*VRS Rate Freeze FNPRM*).

<sup>7</sup> *Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8703-06, paras. 212-16 (2013) (*VRS Reform Order*), *aff’d in part and vacated in part sub nom. Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014).

<sup>8</sup> *Id.* at 8698-99, paras. 199-200.

platform, will soon be implemented, and the Commission believes all existing providers should have a fair opportunity to participate in this important reform. Finally, some small providers offer service features that may be helpful in advancing the goal of functionally equivalent service for certain subsets of VRS consumers, such as Spanish language speakers, deaf-blind consumers, and deaf-owned businesses.

3. Therefore, the Commission adopts the temporary, limited compensation rate “freeze” proposed in the *VRS Rate Freeze FNPRM*. Specifically, from the effective date of this Report and Order through October 31, 2016, the Commission directs the TRS Fund administrator to pay compensation to the three smallest VRS providers at a rate of \$5.29 per minute. In addition, the Commission directs the administrator to pay each of the smallest VRS providers a one-time lump sum reflecting the difference between the compensation they would have received if they had been paid at a rate of \$5.29 per minute and the compensation they actually received at the lower applicable rates, for all compensable calls completed during the period between July 1, 2015, and the effective date of this Report and Order.

4. In addition, to avoid subjecting the smallest VRS providers to a sudden drop in compensation upon the expiration of the 16-month period, the Commission directs the administrator to pay compensation to the smallest VRS providers at a rate of \$5.06 per minute from November 1, 2016, through April 30, 2017, and at a rate of \$4.82 per minute from May 1, 2017, through June 30, 2017.

5. In this Report and Order, the Commission adopts its proposal to temporarily “freeze” the compensation rates applicable to the smallest VRS providers and determines, as it concluded in the Initial Regulatory Flexibility Analysis, that this measure will not impose any additional compliance requirements on small businesses and would temporarily ease the impact of existing VRS regulations on small entities by temporarily increasing the VRS compensation rate for small entities above the rate currently in effect.<sup>9</sup>

6. Therefore, the Commission certifies that the rule amendments in this Order will not have a significant economic impact on a substantial number of small entities.

7. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.<sup>10</sup> In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.<sup>11</sup>

---

<sup>9</sup> The service improvement measures proposed in the *VRS Rate Freeze FNPRM* are not addressed in this Report and Order.

<sup>10</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>11</sup> *Id.* § 605(b).